



SBC Response Letter attached hereto as Exhibit D. Finally, just yesterday, on March 3, 2005, SBC issued another Accessible Letter Number CLECALL05-037, which invalidly restricts XO's ability to review and copy data related to Tier 1, Tier 2, and Tier 3 wire center business line and fiber-based collocator counts. See SBC Accessible Letters, attached hereto as Exhibit A.

SBC's blatant disregard of Commission direction is evidenced simply and clearly by SBC's own written words as set forth in the Accessible Letters:

"The effect of the TRO Remand Order on New, Migration or Move LSRs for these affected elements is operative notwithstanding interconnection agreements or applicable tariffs"

(emphasis added). SBC makes no attempt to hide its strategy to thwart XO's attempts to fully comply with the TRRO and to ensure a seamless transition of its customers off affected elements. In the TRRO, the Commission required ILECs and CLECs to, in good faith, amend their ICAs to incorporate the Commission's most recent rule changes. Specifically, ¶ 233 of the TRRO clearly states that "[the Commission] expect[s] that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. Thus, carriers *must implement changes to their interconnection agreements consistent with our conclusions in this Order*" (emphasis added and footnotes omitted). The Commission elaborates on this obligation by stating that "the incumbent LEC and competitive LEC *must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes*" (emphasis added and footnotes omitted). The TRRO does not create exceptions to this premise or unilaterally permit SBC to pick and choose which of the Commission rule changes must be incorporated into its ICA with XO and which it can unilaterally implement without negotiation or discussion. Such position is clearly violative of the TRRO.

The Commission further clarified in the TRRO that parties were to rely on ICA amendment process to incorporate its changes, including all transitional provisions, explicitly referencing carriers' use of the change of law provisions in their ICAs. Indeed, the Commission emphasized that **"carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including completing any change of law processes."** See TRRO ¶¶ 143 and 196. SBC's position that the rule changes promulgated by the Commission in the TRRO are self effectuating, and that XO is required to enter into the SBC form ICA amendment by March 10, 2005, a day *before* the effective date of the TRRO, and more than one year prior to the date authorized under the TRRO, is clearly without basis and wholly inconsistent with TRRO ¶¶ 143 and 196. SBC's position is further undermined by the language in TRRO ¶¶ 145 and 198, which state that

"the transition mechanism adopted here is simply a default process, and pursuant to Section 252(a)(1), carriers remain free to negotiate alternative arrangements superseding this transition period. The transition mechanism also does not replace or supersede any commercial arrangements carriers have reached for the continued provision of . . . facilities or services."

SBC's contentions that it can unilaterally implement the transitional provisions set forth in the TRRO fly in the face of this Commission construct, which by its clear terms allows for the replacement of the stated transition mechanism with terms negotiated or arbitrated between the parties. This Commission construct clearly contemplates nothing less than full bilateral negotiations between the parties of all **"rates, terms and conditions necessary to implement the [Commission's] rule changes."** See TRRO ¶ 233 (emphasis added).

It is also important to emphasize that the Commission explicitly elected to effectuate its rule changes through the ICA Amendment process, recognizing that these ICAs already provide for a mechanism for incorporating changes in the law, and that such changes will take some period of time to



complete. The Commission has aptly embraced these change of law mechanisms by requiring carriers to follow their own negotiated processes in order to give effect to the new Commission rules. Also recognized by the Commission decision is that until the change of law process, and resulting negotiations, are completed, albeit within the time frames prescribed in the TRRO, the ICA terms and conditions as previously negotiated and agreed by the respective parties must continue to govern without interruption or alteration. As such, SBC cannot now attempt to circumvent the very terms it negotiated with XO in direct contravention of Commission rules simply because it feels it would benefited by doing so. The Commission has explicitly set forth a process to incorporate its new rule changes into existing ICAs, and SBC must be made to follow that procedure.

As such, we now respectfully request that the Bureau take whatever steps are necessary to ensure SBC complies with the clear directives of the Commission in the TRRO. SBC must not be permitted to steamroll this process, placing XO and its customers in further jeopardy. Conversely, XO has no interest in unreasonably delaying the complete implementation of the Commission's rules. Quite to the contrary, it is XO's hope to quickly and smoothly implement all required rule changes so that its customers can be seamlessly transitioned to new service arrangements where necessary and without interruption. Indeed, as referenced above, XO has already sent requests to SBC for negotiation of the necessary amendments to their ICAs, as well as a request for the business line and fiber-based collocators counts to support SBC's Tier 1, Tier 2, and Tier 3 wire center determinations. Despite XO's good faith requests consistent with the process set forth in the TRRO, however, SBC continues to refuse to engage XO in good faith negotiations, and after first refusing to provide any of the back-up data underlying its wire center determinations, has unduly restricted access to such back-up data to counsel only, "copying prohibited," inappropriately relying on the Protective Order issued by the Commission in the TRRO proceeding. See SBC Response at pp 3-4, SBC Accessible Letter dated March 3, 2005. Indeed, as contemplated by ¶ 155 of the 1996 Local Competition Order, CC Docket Nos. 96-98, 95-185, SBC must be required to permit access to such back-up data to XO without such restrictions as such data is necessary for XO to verify SBC's wire center determinations and fully and effectively negotiate the required ICA amendments. SBC's blatant refusal to work with XO in good faith to implement the provisions of the TRRO must not be tolerated. SBC's actions again demonstrate its bad faith as it continues to place unreasonable and inappropriate impediments in the way of its competitors, and in violation of application federal rules. After more than 9 years of delays and excuses, it is time for SBC to fulfill its obligations as required by clear Commission order.

As you are aware, this is a tenuous time for small and mid-sized competitive telecommunications carriers, with new mega mergers and consolidations announced almost weekly, and large carriers continuing to dominate the marketplace. It is thus imperative that ILECs, like SBC, be required to comply with the law so competitive LECs can have the certainty they need to ensure uninterrupted, cost effective, quality service to their customers.

Thank you for your prompt attention to this matter.

Sincerely,

Christopher McKee
XO Communications, Inc.

XO Communications



EXHIBIT A

VA01/KARPJ/57620.2

www.xo.com



Accessible

Date: **February 11, 2005**

Number: **CLECALL05-019**

Effective Date: **N/A**

Category: **Loop-Transport**

Subject: **(BUSINESS PROCESSES) SBC's¹ Implementation of the FCC TRO Remand Order for Unbundled High-Capacity Loops and Unbundled Dedicated Transport – Order Rejection**

Related Letters: **[CLECALL05-020**

Attachment: **Yes (4)**

Loop/Transport Price

Increase/Transition Period;

CLECALL05-016 SBC Interim

"UNE-P Replacement"

Commercial Offering;

CLECALL05-018 Letter Re:

ULS/UNE-P Price

Increase/Transition Period; and

CLECALL05-017 Order Rejection

ULS-UNE-P]

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California, SBC Nevada, SBC Arkansas, SBC Illinois, SBC Kansas, SBC Missouri, SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **N/A**

Contact: **Account Manager**

Conference Call/Meeting: **N/A**

To: **SBC's Local Wholesale Customers**

On February 4, 2005, the FCC issued its "TRO Remand Order", concerning the provision of unbundled network elements. As set forth in the TRO Remand Order, specifically in Rule 51.319(a)(6), as of March 11, 2005, CLECs "may not obtain," and SBC and other ILECs are not required to provide access to Dark Fiber Loops on an unbundled basis to requesting telecommunications carriers. The TRO Remand Order also finds, specifically in Rules 51.319(a)(4), (a)(5) and 51.319(e), that, as of March 11, 2005, CLECs "may not obtain," and SBC and other ILECs are not required to provide access to DS1/DS3 Loops or Transport or Dark Fiber Transport on an unbundled basis to requesting telecommunications carriers under certain circumstances. Therefore, as of March 11, 2005, in accordance with the TRO Remand Order, CLECs may not place, and SBC will no longer provision New, Migration or Move Local Service Requests (LSRs) for affected elements.

There are different impairment findings in the TRO Remand Order for each category of elements addressed by this Accessible Letter. To address the differences and to ensure clarity, SBC has included separate attachments for DS1 and DS3 Unbundled High Capacity Loops, DS1 and DS3 Unbundled Dedicated Transport (UDT), Unbundled Dark Fiber Loops and Dark Fiber Unbundled Dedicated Transport. Please refer to the appropriate attachment to determine how orders for each category of elements will be treated in light of the TRO Remand Order.

¹ References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

The effect of the TRO Remand Order on New, Migration or Move LSRs for these affected elements *is operative notwithstanding interconnection agreements or applicable tariffs.*

Should you have any questions regarding this Implementation notice, please contact your Account Manager.

CLECALL05-019**LOOPS ATTACHMENT: Implementation Plan for DS1 and DS3 High-Capacity Loops - Order Rejection.****New Local Service Requests (LSRs).**

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for DS1 or DS3 High-Capacity Loops in excess of the caps established by Rule 51.319(a)(4) and 51.319(a)(5) or in service areas served by Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(a)(4) and 51.319(a)(5) ("Affected DS1 and DS3 High-Capacity Loops"). Any New, Migration or Move LSRs placed for Affected DS1 or DS3 High-Capacity Loops on or after March 11, 2005 will be rejected.

CLECALL05-019

**TRANSPORT ATTACHMENT: Implementation Plan for DS1 and DS3 Dedicated Transport
- Order Rejection.**

New Local Service Requests (LSRs).

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for DS1 or DS3 Dedicated Transport in excess of the caps established by Rule 51.319(e)(2)(ii) and Rule 51.319(e)(2)(iii) or on routes between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rule 51.319(e)(2)(ii) and Rule 51.319(e)(2)(iii) ("Affected DS1 or DS3 Dedicated Transport"). Any New, Migration or Move LSRs placed for Affected DS1 or DS3 Dedicated Transport on or after March 11, 2005 will be rejected.

CLECALL05-019

DARK FIBER LOOPS ATTACHMENT: Implementation Plan for Dark Fiber Loops- Order Rejection.

New Local Service Requests (LSRs).

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, pursuant to Rule 51.319(a)(6), you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for Dark Fiber Loops. Any New, Migration or Move LSRs placed for Dark Fiber Loops on or after March 11, 2005 will be rejected.

CLECALL05-019

DARK FIBER TRANSPORT ATTACHMENT: Implementation Plan for Dark Fiber Dedicated Transport- Order Rejection.

New Local Service Requests (LSRs).

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, pursuant to Rule 51.319(e)(iv), you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for Dark Fiber Dedicated Transport in service areas between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order ("Affected Dark Fiber Dedicated Transport"). Any New, Migration or Move LSRs placed for Affected Dark Fiber Dedicated Transport served by these Wire Centers on or after March 11, 2005 will be rejected.



Accessible

Date: **February 11, 2005**

Number: **CLECALL05-020**

Effective Date: **N/A**

Category: **Loop-Transport**

Subject: **(BUSINESS PROCESSES) SBC's¹ Implementation of the FCC TRO Remand Order for Unbundled High-Capacity Loops and Unbundled Dedicated Transport - Transition Plan**

Related Letters: **[CLECALL05-019**

Attachment: **Yes (5)**

**Loop/Transport Order Rejection;
CLECALL05-016 SBC Interim
"UNE-P Replacement"
Commercial Offering;
CLECALL05-018 Letter Re:
ULS/UNE-P Price
Increase/Transition Period; and
CLEC ALL05-017 Order Rejection
ULS-UNE-P]**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California, SBC Nevada, SBC Arkansas, SBC Illinois, SBC Kansas, SBC Missouri, SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **March 10, 2005**

Contact: **Account Manager**

Conference Call/Meeting: **N/A**

To: **SBC's Local Wholesale Customers**

This letter is to share with you SBC's plans to implement the FCC's February 4, 2005 TRO Remand Order, as it pertains to Unbundled Dedicated Transport and Unbundled High-Capacity Loops. These plans have been developed in accordance with the TRO Remand Order and are described in element-specific attachments to this Accessible Letter with respect to the following two areas as outlined in the TRO Remand Order: 1) the applicable Transition Period for the Embedded Base and 2) the applicable Transition Pricing for the Embedded Base. There are different transition periods defined and different impairment findings in the TRO Remand Order for each category of elements addressed by this Accessible Letter. To address the differences and to ensure clarity, SBC has set forth the different implementation plans in separate attachments for DS1 and DS3 High Capacity Loops, DS1 and DS3 Unbundled Dedicated Transport (UDT), Dark Fiber Loops and Dark Fiber Unbundled Dedicated Transport.

As explained in CLECALL05-019, as of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to send, and SBC will no longer accept, New, Migration or Move LSRs for unbundled high-capacity loops or transport, as is more specifically set forth in that Accessible Letter, and such orders will be rejected.

Your embedded base of the affected high-capacity loop and transport elements will be treated as is more specifically set forth in the attachments to this Letter, as per the requirements of the TRO Remand Order. Also attached is a sample amendment to your Interconnection Agreement. A signature-ready Amendment and instructions will be available on CLEC-Online

¹ References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

(<https://clec.sbc.com/clec>) not later than February 21, 2005, for you to download, print, complete and return to SBC. Please sign and return the Amendment to SBC by March 10, 2005. Paragraph 233 of the Order requires good faith negotiations regarding implementation of the rule changes and implementation of the conclusions adopted in the Order.

Should you have any questions regarding this implementation notice, please contact your Account Manager.



Final L and T
ample Amendment.

CLECALL05-020**LOOPS ATTACHMENT: Implementation Plan for DS1 and DS3 High-Capacity Loops.****Transition Period for the Embedded Base.**

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to DS1 or DS3 High-Capacity Loops in excess of the caps established by Rule 51.319(a)(4) and 51.319(a)(5) or in service areas served by Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(a)(4) and 51.319(a)(5) ("Affected Unbundled DS1 and DS3 High-Capacity Loops").

As established by the TRO Remand Order, the transition period for the Affected Unbundled DS1 and DS3 High-Capacity Loops is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be responsible for the transition of Affected DS1 and DS3 High-Capacity Loops to an alternative service arrangement. To the extent that there are CLEC embedded base Affected DS1 or DS3 High-Capacity Loops in place at the conclusion of the 12-month transition period, SBC will convert them to a Special Access month-to-month service under the applicable access tariffs.

Transition Pricing for the Embedded Base.

The TRO Remand Order authorizes SBC to modify rates for embedded base Affected Unbundled DS1 and DS3 High-Capacity Loops to equal the higher of (1) the rate your company paid for such high-capacity loops as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such high-capacity loops, *plus 15%*.

CLECALL05-020

TRANSPORT ATTACHMENT: Implementation Plan for DS1 and DS3 Unbundled Dedicated Transport (UDT).

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to DS1 or DS3 UDT in excess of the caps established by Rule 51.319(e)(2)(ii) and 51.319(e)(2)(iii) or on routes between pairs of Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(e)(2)(ii) and 51.319(e)(2)(iii) ("Affected Unbundled DS1 and DS3 High-Capacity Loops").

As established by the TRO Remand Order, the transition period for Affected DS1 and DS3 UDT is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be responsible for the transition of Affected DS1 and DS3 UDT facilities to an alternative service arrangement. To the extent that there are CLEC embedded base Affected DS1 or DS3 UDT facilities in place at the conclusion of the 12-month transition period, SBC will convert them to a Special Access month-to-month service under the applicable access tariffs.

Transition Pricing for the Embedded Base.

The TRO Remand Order authorizes SBC to modify rates for Affected DS1 and DS3 UDT to equal the higher of (1) the rate your company paid for such UDT facilities as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such UDT facilities loops, *plus 15%*.

CLECALL05-020

DARK FIBER LOOPS ATTACHMENT: Implementation Plan for Dark Fiber High-Capacity Loops.

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to Dark Fiber High-Capacity Loops. As defined in the TRO Remand Order, the transition period for unbundled Dark Fiber High-Capacity Loops is 18 months. This 18-month transition period will begin on March 11, 2005 and end on September 11, 2006. During this 18-month transition period, your Company will be responsible for the removal of services you are providing over these unbundled Dark Fiber High-Capacity Loops and for returning the Loops to SBC. To the extent that there are CLEC embedded base unbundled Dark Fiber High-Capacity Loops in place at the conclusion of the 18-month transition period, SBC will disconnect such facilities.

Transition Pricing for the Embedded Base.

The TRO Remand Order authorizes rates for embedded base unbundled Dark Fiber High-Capacity Loops to be modified to a rate equal to the higher of (1) the rate your company paid for such Dark Fiber High-Capacity Loops as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such Loops, *plus 15%*.

CLECALL05-020

DARK FIBER TRANSPORT ATTACHMENT: Implementation Plan for Dark Fiber Transport.

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to Dark Fiber UDT on routes between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rule 51.319(e)(2)(iv) ("Affected Dark Fiber UDT").

As established by the TRO Remand Order, the transition period for Affected Dark Fiber UDT is 18 months. This 18-month transition period will begin on March 11, 2005 and end on September 11, 2006. During this 18-month transition period, your Company will be responsible for removing services you are providing over the Affected Dark Fiber UDT and for returning these facilities to SBC. To the extent that there are CLEC embedded base Affected Dark Fiber UDT facilities in place at the conclusion of the 18-month transition period, SBC will disconnect such facilities.

Pricing for the Embedded Base.

The TRO Remand Order authorizes rates for Affected Dark Fiber UDT to be modified to a rate equal to the higher of (1) the rate your company paid for such facilities as of June 15, 2004 *plus* 15% or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such facilities, *plus* 15%.



Accessible

Date: **March 3, 2005**

Number: **CLECALL05-037**

Effective Date: **N/A**

Category: **Loop-Transport (UNE)**

Subject: **(BUSINESS PROCESSES) SBC's¹ Loop-Transport Non-Impaired Wire Center Information**

Related Letters: **CLECALL05-019 Loop/Transport Order Rejection; Attachment: No
CLECALL05-020 Loop/Transport Price
Increase/Transition Period; and CLECALL05-027 and
CLECALL05-031 Loop/Transport Non-Impaired Wire
Center Identification**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California,
SBC Nevada, SBC Arkansas, SBC Illinois, SBC Kansas, SBC Missouri,
SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **March 10, 2005**

Contact: **See Contact in this AL**

Conference Call/Meeting: **N/A**

To: **SBC's Wholesale Customers**

The purpose of this Accessible Letter is to provide additional information regarding the wire centers that meet the FCC's non-impairment thresholds for Dedicated DS1, DS3 and Dark Fiber Transport routes and DS1 and DS3 loops as set forth in the FCC's new Rule 51.319 and the Triennial Review Remand Order (TRRO), released on February 4, 2005. Additionally, to the extent notice is required under interconnection agreements, this Accessible Letter provides notice that CLEC-specific collocation data may be disclosed for purposes of implementing the FCC's TRRO and Rule 51.319.

On February 22, 2005, SBC, via Accessible Letters **CLECALL05-027** and **CLECALL05-031**, provided information which identified wire centers where CLECS are not impaired without unbundled Dedicated DS1, DS3 and Dark Fiber Transport and unbundled DS1 and DS3 loops under the FCC's new unbundling criteria, and where CLECs therefore will not be able to order new facilities as of the effective date of the FCC's TRRO, i.e., March 11, 2005.

SBC has received requests for additional data regarding 1) the number of ARMIS 43-08 business lines, business UNE-P lines and UNE-loops and/or 2) the number of unaffiliated fiber-based collocators in the identified wire centers. SBC is providing such information for the sole purpose of allowing requesting carriers to fulfill their obligation to conduct the required "reasonably diligent inquiry" before self-certifying that any request for high-capacity unbundled loops or dedicated transport does not include facilities for which there is no impairment. This is to advise you that such data will be available to counsel pursuant to the Protective Order issued by the FCC in the TRRO proceeding (DA 04-3152, released September 29, 2004) at the following location:

Kellogg, Huber, Hansen, Todd, Evans and Figel P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Such information will be designated "copying prohibited" pursuant to paragraph 7 of the Protective Order.

To schedule an appointment to view the information, please call Kevin Walker at 202-367-7820.

¹ References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

EXHIBIT B

XO Communications



VA01/KARPJ/57620.2

www.xo.com

XO Communications

810 Jorie Boulevard
Suite 200
Oak Brook, IL 60523
USA

February 18, 2005

SBC Contract Administration
ATTN: Notices Manager
311 S. Akard, 9th Floor
Four Bell Plaza
Dallas, TX 75202-5398

Re: Triennial Review Remand Order - Accessible Letters

XO Communications, Inc. ("XO"), has received SBC's Accessible Letter Number CLECALL05-019 and related letters¹ regarding the TRO Remand Order dated February 11, 2005 ("Notice"). In the Notice, SBC states that "as of March 11, 2005, in accordance with the TRO Remand Order, CLECs may not place, and SBC will no longer provision New, Migration or Move Local Service Requests (LSRs) for affected elements" under certain circumstances, including Dark Fiber Loops or Transport and DS1/DS3 Loops or Transport. The Notice further provides that "[t]he effect of the TRO Remand Order on New, Migration or Move LSRs for these affected elements is operative notwithstanding interconnection agreements or applicable tariffs," and any such LSRs "on or after March 11, 2005 will be rejected." Neither the FCC nor the parties' interconnection agreements ("ICAs") authorize SBC to take such unilateral action without first amending the ICAs. The Notice, therefore, violates federal law and is an anticipatory breach of SBC's agreements with XO.

SBC purports to rely on the recent FCC unbundling order, *In re Unbundled Access to Network Elements*, FCC 04-290, WC Docket No. 04-313 & CC Docket No. 01-338, Order on Remand (rel. Feb. 4, 2005) ("Triennial Review Remand Order" or "TRRO"). The Notice, however, fails to reference any provision in the TRRO that permits SBC to implement its interpretation of that Order without amending its ICAs. Such an omission is not surprising given that the FCC expressly held to the contrary.

The FCC stated, "We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. . . . Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes." TRRO ¶ 233

¹ CLECALL 05-017, 05-018, 05-019 and 05-020

XO Communications

XO™

(footnote omitted and emphasis added). Far from authorizing SBC to implement the TRRO unilaterally, the FCC has required that SBC negotiate with XO to amend their ICAs to incorporate the most recent changes to the FCC's rules.

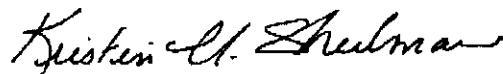
The transition plans set forth in the TRRO also expressly apply to the ICA amendment process. The Order provides that "carriers have twelve months from the effective date of this Order to **modify their interconnection agreements**, including completing any change of law process." TRRO ¶¶ 143 & 196 (emphasis added). The FCC thus established the transition period to provide the time required for SBC and XO to amend their interconnection agreements, not just to transition affected UNEs to alternative facilities or arrangements.

Nor could the TRRO's provisions otherwise be self-effectuating as SBC assumes in the Notice. The Order states, "Of course, the transition mechanism adopted here is simply a default process, and pursuant to section 252(a)(1), carriers remain free to negotiate alternative arrangements superseding this transition period." TRRO ¶¶ 145 & 198. SBC may not unilaterally implement the TRRO transition plan when that period has been established to provide time to amend the ICAs and the entire transition plan itself is subject to being replaced by a plan negotiated or arbitrated between the parties.

XO has no interest in unreasonably delaying implementation of changes in federal law. Indeed, SBC has yet to implement effective provisions of the Triennial Review Order, including commingling and conversions of special access services to UNEs, and XO seeks expeditiously to incorporate those requirements into the parties' ICAs. Accordingly, XO by way of letters to SBC dated February 18th, 2005, has formally requested that SBC engage in negotiations to amend those ICAs to conform to current legal requirements.

Pending the outcome of those negotiations, however, XO expects SBC to comply with the existing ICAs. If SBC refuses to process XO's orders for UNEs, XO will view such failure as unlawful and an act of bad faith, and XO will immediately take appropriate legal and regulatory actions.

Sincerely,



Kristin U. Shulman
Executive Director - Regulatory Affairs

Cc: Larry Cooper
Cheryl Woodward-Sullivan

EXHIBIT C

XO Communications



VA01/KARPJ/57620.2

www.xo.com

February 18, 2005

VIA OVERNIGHT MAIL

SBC Contract Administration

ATTN: Notices Manager
311 S. Akard, 9th Floor
Four Bell Plaza
Dallas, TX 75202-5398

Attached are separate notices from XO Communications Services, Inc. requesting SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*, and to the extent necessary the *Triennial Review Order*. Attached are individual notices from XO Communications Services, Inc., on behalf of and/or as successor in interest to:

XO Illinois, Inc.	Allegiance Telecom of Illinois, Inc.	Coast to Coast Telecommunications, Inc.
XO Michigan, Inc.	Allegiance Telecom of Michigan, Inc.	
XO Ohio, Inc.	Allegiance Telecom of Ohio, Inc.	
XO Texas, Inc.	Allegiance Telecom of Texas, Inc.	
XO Missouri, Inc.	Allegiance Telecom of Missouri, Inc.	
XO California, Inc.	Allegiance Telecom of California, Inc.	
XO Indiana, Inc.		
XO Wisconsin, Inc.		
XO Oklahoma, Inc.		
XO Arkansas, Inc.		
XO Kansas, Inc.		
XO Connecticut, Inc.		
XO California, Inc.		

XO Communications, Inc.

11111 Sunset Hills Road
Reston, VA 20190
USA

February 18, 2005

VIA OVERNIGHT MAILSBC Contract Administration
ATTN: Notices Manager
311 S. Akard, 9th Floor
Four Bell Plaza
Dallas, TX 75202-5398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO¹ and Pacific Bell Telephone Company d/b/a SBC California ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. We intend that the negotiations will include the effect of any independent state authority to order unbundling on SBC's ongoing obligation to provide access to certain unbundled network elements.

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

¹ "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO California, Inc.

XO™

The main company contact for these negotiations is:

Gagi Leeger
Director Regulatory Contracts
11111 Sunset Hills Road
Reston, VA 20190
703-547-2109 voice
703-547-2300 facsimile
Email: gagi.leeger@xo.com

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,



Gagi Leeger
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hill Road
Reston, VA 20190
USAXOTM

February 18, 2005

VIA OVERNIGHT MAILSBC Contract Administration
ATTN: Notices Manager
311 S. Akard, 9th Floor
Four Bell Plaza
Dallas, TX 75202-5398

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The XO logo consists of a stylized 'X' followed by a '0' with a small trademark symbol.

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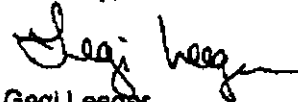
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Sincerely,

A handwritten signature in cursive script that reads 'Gegi Leeger'.

Gegi Leeger
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road
Reston, VA 20190
USA

February 18, 2005

VIA OVERNIGHT MAILSBC Contract Administration
ATTN: Notices Manager
311 S. Akard, 9th Floor
Four Bell Plaza
Dallas, TX 75202-5398

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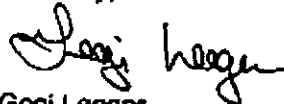
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XO Communications, Inc.

11111 Sunset Hills Road
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February 18, 2005

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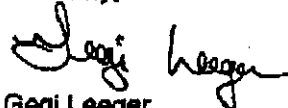
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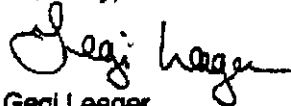
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Director Regulatory Contracts

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11111 Sunset Mills Road
Reston, VA 20190
USA

February 18, 2005

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Four Bell Plaza
Dallas, TX 75202-5398

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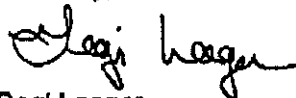
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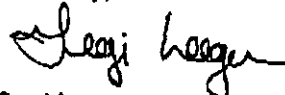
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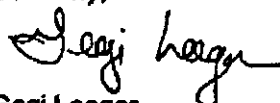
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On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO¹ and Michigan Bell Telephone Company d/b/a/ SBC Michigan ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.² We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

¹ "XO," for purposes of this notice, refers to XO Communications, Inc., on behalf of Coast to Coast Telecommunications, Inc.

² The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.

XO™

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

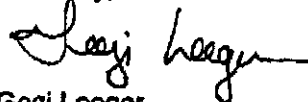
The main company contact for these negotiations is:

Gegi Leeger
Director Regulatory Contracts
11111 Sunset Hills Road
Reston, VA 20190
703-547-2109 voice
703-547-2300 facsimile
Email: gegi.leeger@xo.com

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,



Gegi Leeger
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hill's Road
Reston, VA 20190
USA

February 18, 2005

VIA OVERNIGHT MAILSBC Contract Administration
ATTN: Notices Manager
311 S. Akard, 9th Floor
Four Bell Plaza
Dallas, TX 75202-5398

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Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*.

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XO

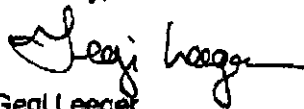
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Sincerely,



Gegi Leeger
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road
Reston, VA 20190
USA

February 18, 2005

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ATTN: Notices Manager
311 S. Akard, 8th Floor
Four Bell Plaza
Dallas, TX 75202-5398

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XO™

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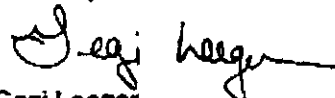
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Sincerely,



Gegi Leeger
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road
Reston, VA 20190
USA

XO™

February 18, 2005

VIA OVERNIGHT MAIL

SBC Contract Administration
ATTN: Notices Manager
311 S. Akard, 9th Floor
Four Bell Plaza
Dallas, TX 75202-5398

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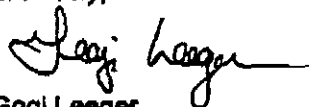
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Sincerely,



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Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road
Reston, VA 20190
USA

February 18, 2005

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Dallas, TX 75202-5398

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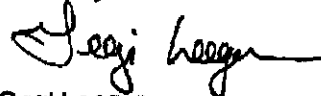
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Sincerely,



Gagi Leeger
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Hills Road
Reston, VA 20190
USAXOTM

February 18, 2005

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ATTN: Notices Manager
311 S. Akard, 9th Floor
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Dallas, TX 75202-5398

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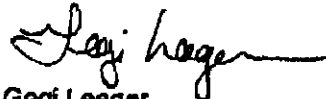
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Gegi Leeger
Director Regulatory Contracts

XOTM

February 18, 2005

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